

106TH CONGRESS  
1ST SESSION

# S. 1229

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a foreign pesticide for distribution and use within that State.

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## IN THE SENATE OF THE UNITED STATES

JUNE 16, 1999

Mr. BURNS introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a foreign pesticide for distribution and use within that State.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REGISTRATION OF FOREIGN PESTICIDES BY**  
4 **STATES.**

5 (a) IN GENERAL.—Section 24 of the Federal Insecti-  
6 cide, Fungicide, and Rodenticide Act (7 U.S.C. 136v) is  
7 amended by adding at the end the following:

8 “(d) REGISTRATION OF FOREIGN PESTICIDES BY  
9 STATES.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) COMPARABLE DOMESTIC PES-  
3 TICIDE.—The term ‘comparable domestic pes-  
4 ticide’ means a pesticide that—

5 “(i) is registered under section 3;

6 “(ii) is not subject to a notice of in-  
7 tent to cancel or suspend or an enforce-  
8 ment action under section 12, based on the  
9 labeling or composition of the pesticide;

10 “(iii) is used as the basis for compari-  
11 son for the determinations required under  
12 paragraph (3); and

13 “(iv) is labeled for use on the site or  
14 crop for which registration is sought under  
15 this subsection on the basis of a use that  
16 is not the subject of a pending interim ad-  
17 ministrative review under section 3(c)(8).

18 “(B) FOREIGN PESTICIDE.—The term ‘for-  
19 eign pesticide’ means a pesticide that—

20 “(i) is registered for use as a pesticide  
21 in a foreign country;

22 “(ii) is identical or substantially simi-  
23 lar in its composition to any pesticide reg-  
24 istered under section 3; and

1 “(iii) is registered by the registrant of  
 2 a comparable domestic pesticide or an af-  
 3 filiated entity of the registrant.

4 “(2) AUTHORITY TO REGISTER FOREIGN PES-  
 5 TICIDES.—

6 “(A) IN GENERAL.—On the request of 1 or  
 7 more agricultural producers or on the initiative  
 8 of a State, the State may register a foreign pes-  
 9 ticide for distribution and use in the State if  
 10 the registration is consistent with this sub-  
 11 section and other provisions of this Act and is  
 12 approved by the Administrator.

13 “(B) EFFECT OF REGISTRATION.—

14 “(i) IN GENERAL.—Except as pro-  
 15 vided in clause (ii), on approval by the Ad-  
 16 ministrator, the registration of a foreign  
 17 pesticide by a State shall be considered a  
 18 registration of the pesticide under section  
 19 3.

20 “(ii) DISTRIBUTION TO OTHER  
 21 STATES.—A foreign pesticide that is reg-  
 22 istered by a State under this subsection  
 23 and distributed to a person in that State  
 24 shall not be transported to, or used by, a  
 25 person in another State unless the dis-

1           tribution and use is consistent with the  
2           registration by the original State.

3           “(C) REGISTRANT.—A State that registers  
4           a foreign pesticide under this subsection shall  
5           be considered the registrant of the foreign pes-  
6           ticide under this Act.

7           “(3) STATE REQUIREMENTS FOR REGISTRA-  
8           TION.—To register a foreign pesticide under this  
9           subsection, a State shall—

10           “(A)(i) determine whether the foreign pes-  
11           ticide is identical or substantially similar in its  
12           composition to a comparable domestic pesticide;  
13           and

14           “(ii) submit the proposed registration to  
15           the Administrator only if the State determines  
16           that the foreign pesticide is identical or sub-  
17           stantially similar in its composition to a com-  
18           parable domestic pesticide;

19           “(B) for each food or feed use authorized  
20           by the registration—

21           “(i) determine whether there exists a  
22           tolerance or exemption under the Federal  
23           Food, Drug, and Cosmetic Act (21 U.S.C.  
24           301 et seq.) that permits the residues of  
25           the pesticide on the food or feed;

1 “(ii) identify the tolerances or exemp-  
2 tions in the submission made under sub-  
3 paragraph (D); and

4 “(iii) describe in the submission the  
5 proposed application of the tolerances to  
6 meet special local needs;

7 “(C) require that the pesticide bear a label  
8 that—

9 “(i) specifies the information that is  
10 required to comply with section 3(c)(5);

11 “(ii) identifies itself as the only valid  
12 label;

13 “(iii) identifies the State in which the  
14 product may be used;

15 “(iv) identifies the approved use and  
16 includes directions for use, use restrictions,  
17 and precautions that are identical or sub-  
18 stantial similar to the directions for use,  
19 use restrictions, and precautions that are  
20 on the approved label of the comparable  
21 domestic pesticide; and

22 “(v) includes a statement indicating  
23 that it is unlawful to distribute or use the  
24 foreign pesticide in the State in a manner

1           that is inconsistent with the registration of  
2           the pesticide by the State; and

3           “(D) submit to the Administrator a de-  
4           scription of the proposed registration of the for-  
5           eign pesticide that includes a statement of the  
6           determinations made under this paragraph, the  
7           proposed labeling for the foreign pesticide, and  
8           related supporting documentation.

9           “(4) APPROVAL OF REGISTRATION BY ADMINIS-  
10          TRATOR.—

11           “(A) IN GENERAL.—Not later than 60  
12          days after receipt of the proposed registration  
13          of a foreign pesticide by a State submitted  
14          under paragraph (3)(D), the Administrator  
15          shall approve the proposed registration if the  
16          Administrator determines that the proposed  
17          registration of the foreign pesticide by the State  
18          is consistent with this subsection and other pro-  
19          visions of this Act.

20           “(B) NOTICE OF APPROVAL.—No registra-  
21          tion of a foreign pesticide by a State under this  
22          subsection shall be considered approved, or be  
23          effective, until the Administrator provides no-  
24          tice of approval of the registration in writing to  
25          the State.

“(C) HARMONIZATION OF REGISTRATIONS.—In carrying out this subsection, the Administrator shall take into account the priority of harmonizing the registrations of foreign pesticides and comparable domestic pesticide in accordance with the United States-Canada Free Trade Agreement, the North American Free Trade Agreement, and other applicable agreements and treaties.

“(5) LABELING OF FOREIGN PESTICIDES.—

“(A) DISTRIBUTION.—After a notice of the approval of a foreign pesticide by a State is received by the State, the State shall make labels approved by the State and the Administrator available to persons seeking to distribute the foreign pesticide in the State.

“(B) USE.—A foreign pesticide that is registered by a State under this subsection may be used within the State only if the foreign pesticide bears the approved label for use in the State.

“(C) CONTAINERS.—Each container containing a foreign pesticide registered by a State shall, before the transportation of the foreign pesticide into the State and at all times the for-

1           eign pesticide is distributed or used in the  
 2           State, bear a label that is approved by the State  
 3           and the Administrator.

4           “(D) REPORT.—A person seeking to dis-  
 5           tribute a foreign pesticide registered by a State  
 6           shall provide to the State a report that—

7                   “(i) identifies the person that will re-  
 8                   ceive and use the foreign pesticide in the  
 9                   State; and

10                   “(ii) states the quantity of the foreign  
 11                   pesticide that will be transported into the  
 12                   State.

13           “(E) AFFIXING LABELS.—The act of  
 14           affixing a label to a foreign pesticide under this  
 15           subsection shall not be considered production  
 16           for the purposes of this Act.

17           “(6) ANNUAL REPORTS.—

18           “(A) PREPARATION.—A State registering  
 19           1 or more foreign pesticides under this sub-  
 20           section shall prepare an annual report that—

21                   “(i) identifies the foreign pesticides  
 22                   that are registered by the State;

23                   “(ii) identifies the users of foreign  
 24                   pesticides used in the State; and



1                   “(iii) states the quantity of foreign  
2                   pesticides used in the State.

3                   “(B) AVAILABILITY.—On the request of  
4                   the Administrator, the State shall provide a  
5                   copy of the annual report to the Administrator.

6                   “(7) RECALLS.—If the Administrator deter-  
7                   mines that it is necessary under this Act to termi-  
8                   nate the distribution or use of a foreign pesticide in  
9                   a State, on the request of the Administrator, the  
10                  State shall recall the foreign pesticide.

11                  “(8) SUSPENSION OF STATE AUTHORITY TO  
12                  REGISTER FOREIGN PESTICIDES.—

13                  “(A) IN GENERAL.—If the Administrator  
14                  finds that a State that has registered 1 or more  
15                  foreign pesticides under this subsection is not  
16                  capable of exercising adequate controls to en-  
17                  sure that registration under this subsection is  
18                  consistent with this subsection and other provi-  
19                  sions of this Act or has failed to exercise ade-  
20                  quate control over 1 or more foreign pesticides,  
21                  the Administrator may suspend the authority of  
22                  the State to register foreign pesticides under  
23                  this subsection until such time as the Adminis-  
24                  trator determines that the State can and will

1 exercise adequate control of the foreign pes-  
2 ticides.

3 “(B) NOTICE AND OPPORTUNITY TO RE-  
4 SPOND.—Before suspending the authority of a  
5 State to register a foreign pesticide, the Admin-  
6 istrator shall—

7 “(i) advise the State that the Admin-  
8 istrator proposes to suspend the authority  
9 and the reasons for the proposed suspen-  
10 sion; and

11 “(ii) provide the State with an oppor-  
12 tunity time to respond to the proposal to  
13 suspend.

14 “(9) DISCLOSURE OF INFORMATION BY ADMIN-  
15 ISTRATOR TO THE STATE.—The Administrator may  
16 disclose to a State that is seeking to register a for-  
17 eign pesticide in the State information that is nec-  
18 essary for the State to make the determinations re-  
19 quired by paragraph (3) if the State certifies to the  
20 Administrator that the State can and will maintain  
21 the confidentiality of any trade secrets or commer-  
22 cial or financial information that was marked under  
23 section 10(a) provided by the Administrator to the  
24 State under this subsection to the same extent as is  
25 required under section 10.

1           “(10) PROVISION OF INFORMATION BY REG-  
2           ISTRANTS OF COMPARABLE DOMESTIC PES-  
3           TICIDES.—If a State registers a foreign pesticide,  
4           and a registrant of a comparable domestic pesticide  
5           that is (directly or through an affiliate) a foreign  
6           registrant fails to provide to the State the informa-  
7           tion possessed by the registrant that is necessary to  
8           make the determinations required by paragraph (3),  
9           the Administrator may suspend without a hearing all  
10          pesticide registrations issued to the registrant under  
11          this Act.

12          “(11) PATENTS.—Title 35, United States Code,  
13          shall not apply to a foreign pesticide registered by  
14          a State under this subsection that is transported  
15          into the United States or to any person that takes  
16          an action with respect to the foreign pesticide in ac-  
17          cordance with this subsection.

18          “(12) SUBMISSIONS.—A submission by a State  
19          under this section shall not be considered an applica-  
20          tion under section 3(c)(1)(F).”.

21          (b) CONFORMING AMENDMENT.—The table of con-  
22          tents in section 1(b) of the Federal Insecticide, Fungicide,  
23          and Rodenticide Act (7 U.S.C. prec. 121) is amended by  
24          adding at the end of the items relating to section 24 the  
25          following:

“(d) Registration of foreign pesticides by States.

“(1) Definitions.

“(2) Authority to register foreign pesticides.

“(3) State requirements for registration.

“(4) Approval of registration by Administrator.

“(5) Labeling of foreign pesticides.

“(6) Annual reports.

“(7) Recalls.

“(8) Suspension of State authority to register foreign pesticides.

“(9) Disclosure of information by Administrator to the State.

“(10) Provision of information by registrants of comparable domestic pesticides.

“(11) Patents.

“(12) Submissions.”.

1           (c) EFFECTIVE DATE.—This section and the amend-  
 2   ments made by this section take effect 60 days after the  
 3   date of enactment of this Act.

